



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2005

Mr. Brad Norton
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8845

OR2005-01429

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218762

The City of Austin (the "city") received a request for information regarding a specific contract. You make no arguments and take no position as to whether the information is excepted from disclosure, but you state that the request may involve third party proprietary interests. Accordingly, you indicate and provide documentation showing that pursuant to section 552.305 of the Government Code, you notified TriTech of the request for information and of their right to submit arguments explaining why the information concerning them should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from TriTech that a document entitled "Scope of Products and Services" contains trade secrets that are protected under section 552.110(a) of the Government Code. Additionally, TriTech states that the pricing terms contained within the "Proprietary Annex," "Amendments 4, 7, and 10," "Addendum B," and a specific subcontract are excepted from disclosure under section 552.110(b) of the Government Code.

We have considered the arguments submitted to this office by TriTech and reviewed the submitted information.

Initially we note that while TriTech claims an exception to the disclosure of a document entitled "Scope of Products and Services" and of the pricing terms contained in a subcontract, the city did not submit either document to this office.¹ This ruling does not address the applicability of TriTech's claimed exceptions for information that has not been submitted for our review by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body seeking attorney general's opinion under the Act must submit a copy or representative samples of the specific information requested).

We now turn to TriTech's arguments for the submitted information. Section 552.110 of the Government Code protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

TriTech contends that the pricing terms contained within the "Proprietary Annex," "Amendments 4, 7, and 10," and "Addendum B" are excepted from disclosure under section 552.110(b) of the Government Code. However, we note that the pricing information of a winning bidder is generally not excepted under section 552.110(b) because the public has an interest in knowing the prices charged by government contractors. Open Records Decision No. 514 (1988); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government); *see also* Open Records Decision No. 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Thus, we determine that none of the pricing information is excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual

¹The city did submit a document entitled "Agreement between the . . . [city] . . . and TriTech Software Systems for a Computer Aided Dispatch System." However, after reviewing the submitted arguments and the document, we do not find that this document is the "Scope of Products and Services" document to which TriTech refers.

evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, the city must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

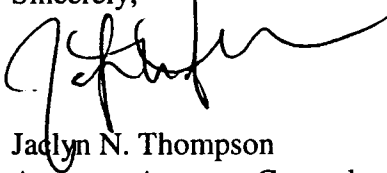
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jacyln N. Thompson', with a stylized, flowing script.

Jacyln N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 218762

Enc. Submitted documents

c: Mr. Henry Jones, III
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(w/o enclosures)

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